

Retail Liquor License, No Authority of Boards of County Commissioners to Refuse. County Commissioners, Authority as to Retail Liquor License.

Boards of county commissioners have no authority with reference to issuance of retail liquor license in cities, towns or villages having more than one hundred inhabitants.

January 5, 1911.

Hon. J. J. Hindson, Chairman,
Board of County Commissioners,
Lewis and Clark County,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 4th inst., making inquiry as to the power of the board of county commissioners to refuse the issuance of a retail liquor dealer's license in the village of East Helena. In your communication you failed to state whether or not East Helena is a village of less than one hundred inhabitants and therefore, whether the application for a saloon license is made in pursuance of Section 2760 of the Revised Codes.

However, from my personal knowledge of the number of inhabitants in the village of East Helena and knowing that the population exceeds one hundred, I therefore, conclude that the inquiry is with reference to the issuance of a retail liquor dealer's license in a village containing a population of more than one hundred. Assuming, therefore, that the foregoing conclusion is correct, it is my opinion that the board of county commissioners has no authority conferred upon

them under the law to in any way act with reference to the issuance of a retail liquor dealer's license within a town, city or camp having a population of more than one hundred inhabitants. It is true that section 2762 of the Revised Codes of 1907 grants the power of supervision and control over persons engaged in the sale of intoxicating liquors in their respective counties outside of the corporate limits of incorporated cities and towns to the board of county commissioners, but from an examination of the act of March 3rd, 1905, being Session Laws 1905, page 154, it is evident that this provision refers only to such licenses as may be issued upon petition presented to the board of county commissioners in accordance with that act and has no application to the issuance of liquor dealer's licenses in communities containing more than one hundred inhabitants.

I have heretofore rendered opinions with reference to the power of the board of county commissioners to revoke retail liquor dealer's license and respectfully call your attention to the Opinions of Attorney General, Vol. 1, page 354, Opinions of Attorney General Vol. 2, page 42, and Opinions of Attorney General Vol. 3, page 54 and 35, dealing with the revocation of licenses, in each of which opinions I have held that it is not within the power of the board of county commissioners to revoke saloon licenses in towns, cities or corporations having a population of more than one hundred, and it is my opinion that for the same reasons the board has no authority in law to act concerning the issuance of such licenses where the population of the town, city or camp exceeds one hundred.

I return, herewith to you the petition enclosed in your communication.

Yours very truly,

ALBERT J. GALEN,
Attorney General.